

Introduced by Senator Margett

February 22, 2006

An act to amend Section 1054.9 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1391, as introduced, Margett. Criminal procedure: postconviction discovery

Existing law requires that discovery materials to which a defendant would have been entitled at the time of trial be made reasonably accessible to the defendant if he or she has been sentenced to death or life in prison without the possibility of parole and files a specified motion or writ of habeas corpus that makes a specified showing

This bill would specify that the discovery requirement pertains to materials that were not previously discovered or were lost or destroyed by defendant's trial counsel since the time of trial.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1054.9 of the Penal Code is amended to
2 read:
3 1054.9. (a) Upon the prosecution of a postconviction writ of
4 habeas corpus or a motion to vacate a judgment in a case in
5 which a sentence of death or of life in prison without the
6 possibility of parole has been imposed, ~~and on a showing that~~
7 ~~good faith efforts to obtain discovery materials from trial counsel~~
8 ~~were made and were unsuccessful, the court shall, except as~~
9 ~~provided in subdivision (c), order that the defendant be provided~~

1 reasonable access to any of the materials described in subdivision
2 (b):

3 ~~(b) For purposes of this section, “discovery materials” means~~
4 ~~materials in the possession of the prosecution and law~~
5 ~~enforcement authorities to which the same defendant would have~~
6 ~~been entitled at time of trial.~~

7 ~~(e) the defendant shall be entitled to:~~

8 *(1) All discovery provided to defendant’s trial counsel. If*
9 *defendant shows that defendant’s trial counsel lost or destroyed*
10 *materials previously discovered to defendant by the prosecution*
11 *or law enforcement, then the defendant shall be provided copies*
12 *of those materials in the possession of the prosecution and law*
13 *enforcement which were lost or destroyed by defendant’s trial*
14 *counsel.*

15 *(2) All materials in possession of the prosecution or law*
16 *enforcement which were not previously discovered to the*
17 *defendant and to which the same defendant would have been*
18 *entitled at the time of trial, upon a showing that there is reason*
19 *to believe the materials exist.*

20 *(b) In response to a writ or motion satisfying the conditions in*
21 *subdivision (a), court may order that the defendant be provided*
22 *access to physical evidence for the purpose of examination,*
23 *including, but not limited to, any physical evidence relating to*
24 *the investigation, arrest, and prosecution of the defendant only*
25 *upon a showing that there is good cause to believe that access to*
26 *physical evidence is reasonably necessary to the defendant’s*
27 *effort to obtain relief. The procedures for obtaining access to*
28 *physical evidence for purposes of postconviction DNA testing*
29 *are provided in Section 1405, and nothing in this section shall*
30 *provide an alternative means of access to physical evidence for*
31 *those purposes.*

32 ~~(d)~~

33 *(c) The actual costs of examination or copying pursuant to this*
34 *section shall be borne or reimbursed by the defendant.*